IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9359 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANIA LASABHAI MEDA

Versus

COMMISSIONER OF POLICE

Appearance:

Ms. Banna Dutta for MS KRISHNA U MISHRA,Adv. for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned A.G.P. Mr. A.J.Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 28-4-1999 passed by the Commissioner of Police, Rajkot (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner inter alia indicate that four criminal cases were registered against the petitioner-detenu at Rajkot Police Station and Pradumannagar Police Station for offences punishable under Sections 457 and 380 read with Sec.114 of the Indian Penal Code. The offences are registered on 14-1-1999, 20-3-1999, 31-10-1998 and 11-1-1998.

2.1 The grounds of detention further indicate that two witnesses Rameshbhai and Anandbhai have given statements dated 24-9-1999 against the petitioner-detenu with regard to nefarious activities of the petitioner-detenu.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that on the date of passing the impugned order the petitioner was in judicial custody because the petitioner could not furnish sureties according to bail orders passed in cases registered at serial nos. 3 and 4 of the grounds of detention. It is contended that the detaining authority has passed the impugned order on the basis of apprehension that the petitioner is likely to furnish surety and after getting himself released on bail is likely to continue his antisocial activity. That non consideration of less drastic remedy as available under Section 437(5) of the Criminal Procedure Code has vitiated the subjective satisfaction and has rendered the detention order invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view

that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.1 as detaining authority has failed to consider less drastic remedy like cancellation and/or opposing the bail. It is observed in the grounds of detention that though the petitioner is in judicial custody on account of non furnishing the sureties for bail, in future the petitioner is likely to be released on bail and after getting himself released on bail is like to continue his antisocial activity. The said observation suggests that the impugned order is based on apprehension and not on material, and as such, the subjective satisfaction having been vitiated, the impugned order is rendered invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 28-4-1999 passed by the Commissioner of Police, Rajkot (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Kania Lasabhai Meda is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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